

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CYTOLOGIX CORPORATION,

Plaintiff,

v.

VENTANA MEDICAL SYSTEMS, INC.,

Defendant.

Civil Action No. 04-11783 (RWZ)

**DECLARATION OF DAVID A. SIMONS ATTACHING EXHIBITS IN SUPPORT OF
CYTOLOGIX'S MOTION FOR REMAINING CLAIM CONSTRUCTION AND
PARTIAL SUMMARY JUDGMENT OF INFRINGEMENT**

I, David A. Simons, am an attorney at Kirkpatrick & Lockhart Preston Gates Ellis LLP, counsel for the Plaintiff, CytoLogix Corporation. Under penalty of perjury, I declare the following to be true to the best of my knowledge, information, and belief:

1. Attached as Ex. A is a true and correct copy of U.S. Patent No. 6,541,261.
2. Attached as Ex. B is a true and correct copy of U.S. Patent No. 6,783,733
3. Attached as Ex. C is a true and correct copy of Defendant's Objections and Third Amended Responses to Interrogatory Nos. 3-6. **[UNDER SEAL]**
4. Attached as Ex. D is a true and correct copy of p. 891 from Webster's Collegiate Dictionary (10th ed. 1996).
5. Attached as Ex. E is a true and correct copy of excerpts from the deposition of Geoffrey D. Nunberg, taken April 20, 2006.
6. Attached as Ex. F is a true and correct copy of an excerpt from Ventana's Proposed Jury Instructions and Verdict Form in Case Nos. 00-12231 and 01-10178.

7. Attached as Ex. G. is a true and correct copy of an excerpt from Plaintiff's Proposed Jury Instructions in Case Nos. 00-12231 and 01-10178.

8. Attached as Ex. H is a true and correct copy of this Court's Jury Instructions re Claim Construction, attached as A31 to Ventana's Appeal Brief in Case Nos. 00-12231 and 01-10178.

9. Attached as Ex. I is a true and correct copy of excerpts from the BenchMark® XT and BenchMark LT Operator Manual (VM 1-8, 10-13, 20, 26-27, 32-40, 47-59, 112-119, 124, 170-174, 218). **[UNDER SEAL]**

10. Attached as Ex. J is a true and correct copy of excerpts from the BenchMark® XT and BenchMark LT Service Manual (VM 425-435, 444-446, 448-456, 465-468, 470-471, 475-476, 486-488, 667, 672, 676-677, 695-696, 708, 724, 727-728). **[UNDER SEAL]**

11. Attached as Ex. K is a true and correct copy of excerpts from the first deposition of William Richards, taken January 13, 2006 (pp. 1-41). **[UNDER SEAL]**

12. Attached as Ex. L is a true and correct copy of the second deposition of William Richards, taken March 13, 2007, along with Deposition Exs. 1-6 and 8. **[UNDER SEAL]**

13. Attached as Ex. M is a true and correct copy of excerpts from the deposition of Andrew Ghusson, taken September 8, 2005 (pp. 1-9, 42-65, and Deposition Exhibit 1).

[UNDER SEAL]

14. Attached as Ex. N is a true and correct copy of the deposition of Wayne Allen Showalter, taken March 15, 2007. **[UNDER SEAL]**

Dated: September 27, 2007

/s/ David A. Simons

David A. Simons (BBO # 638740)

CERTIFICATE OF SERVICE

I hereby certify that I caused the redacted version of the foregoing declaration and exhibits to be served electronically on counsel of record by filing it with the CM/ECF system. I further certify that on this 27th day of September, 2007, I caused a copy of the unredacted version to be served by first class mail, postage prepaid, Defendant's counsel as follows:

Roger J. Chin
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300

/s/ David A. Simons